IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.Rev.Pet.No. 592 of 1999(C)

CRA.35/1994 of SESSIONS COURT, KOTTAYAM
CC.28/1989 of JUDL. MAGISTRATE OF FIRST CLASS-II(MOBILE), KOTTAYAM

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REVN. PETITIONER: APPELLANT/ ACCUSED

RAJAN NARAYANAN @ RAJAN, S/O. NARAYANAN NAIR, VILAVATHU VEEDU, PERUMBAVOOR KARA AND VILLAGE, KUNNATHUNADU TALUK, ERNAKULAM DIST.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENT: RESPONDENT/ COMPLAINANT

STATE OF KERALA, REP.BY THE CIRCLE INSEPCTOR OF POLICE, KOTTAYAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 03/08/2007, ALONG WITH CRRP NO.784 OF 1999 CRRP NO. 805 OF 1999 THE COURT ON 08/08/2007 PASSED THE FOLLOWING:

CRL.RP. NO. 592/1999

ORDER ON CRL.MP. NO.2644/1999 IN CRL.RP. NO.592/1999

DISMISSED

08.08.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.R.P.NOS. 592,784 & 805 OF 1999

DATED THIS THE 8th August 2007

ORDER

The revision petitions are filed by accused 1 to 3 respectively challenging the conviction and sentence imposed on them under Section 392 read with Section 34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two years each. The prosecution case is that A1, who was the Inspector in the Central Excise Department, under suspension and A2, a peon in the above department on 13-7-1986 along with A3, a person who is a native of the State of Maharashtra stopped the de facto complainant/PW1 in the public road near Kottayam railway station when he was on his way to Palai wherein he was residing after alighting from the train and A1 and A2 introducing themselves as customs officials and made PW1 to open his suit case and took away gold ornaments weighing 336.3 grams. The F.I.R. was lodged on 17-7-1986 at 6.30 p.m. PW23, the Circle Inspector conducted the investigation. According to the accused, the prosecution case is a

fabricated one and that PWs. 1, the de facto complainant and 7, the brother in law of RW1 had a grouse against A1 as he had raided the shop of PW7 and hence they in collusion with PW23, the C.I. has foisted a false case against the accused.

2. The evidence adduced in the matter consisted of the testimony of Pws.1 to 23 and Exts.P1 to P11 and MOs. 1 to 8 series. The defence got marked Exts.D1 to D3. PW1, the de facto complainant has testified with respect to the incident which has taken place on 13-7-1986. He has explained the delay in lodging the F.I.S. which was done only on 17-7-1986, i.e. after about 4 days. According to him, he was very much upset and confused as to what has to be done as he was not aware of the fact that A1 was under suspension but was afraid that a case will be charged against him for carrying gold without proper authorization. At the time he was residing with his brother in law, who is PW7, who was running a silver refinery and also a medical shop at Palai. Only after two days of the incident, he

revealed the same to PW7 and it was on the advice of PW7 at first he went to the Central Excise office and enquired about the matter. He was under the impression that they will take the required action. As nothing was heard from them he lodged the complaint with the police. According to him, A1 and A2 confronted him and he got out of the railway station and was walking through the road. A1 showed his identity card as the Inspector of the Central Excise and A2 was introduced an official of the department and forced him to open the brief case and took away the packet containing gold ornaments. He has identified the gold ornaments, i.e.MOs.1 to 8 series which contained MO.1 series of six gold bangles, MO.2 series of 12 gold bangles , MO.3 one gold chain, MO.4 one gold chain, MO.5 two gold chains, MO.6 one gold chain, MO.7 two gold rings and MO.8 two gold studs. He has stated that he also identified the accused from the police station. According to him, he was returning from his native place at Sangli, Maharashtra as his mother had

intimated him that the gold ornaments at their native place is not safe on account of frequent theft in the vicinity and as directed by her he took the ornaments for safe keeping and brought the same to Kerala. PW2 is the mother of PW1 who has supported the version of PW1 in this regard. PW3 cited as an occurrence witness turned hostile and did not support the prosecution. It is PW5, a Panchayat member who has testified in support of the prosecution case. He was cited as an occurrence witness. According to him, on the particular day, i.e.13-7-1986 he was on the way to Thiruvananthapuram to meet the local M.L.A. and that at about 6 a.m. when he was walking towards the railway station in front of the R.M.S. he witnessed the incident. He has testified with respect to the incident fully supporting the version of PW1 that he saw A1 and A2 stopping PW1 and directing him to open the suit case and that on his refusal, A1 brandished his identity card taking it out his pocket and showed it to PW1 and A1 and A2 forcibly made him to open the brief case and that

they took away the ornaments. He has also stated that A3 accompanied A1 and A2. Subsequently after 3 or 4 days he happened to meet PW1 at Palai at Padmaja Medical shop (the above medical shop is owned by PW7) and that he asked PW1 about the incident and that he came to know that PW1 has subjected to robbery and that he gave his address to PW1. He had been to the Medical shop for purchasing certain medicines and it was PW1 who gave him the medicines.

3. PW6 is running a restaurant adjacent to the Kottyam railway station. He has testified that on 13-7-1986 at about 5 a.m. the accused went to the tea shop and had black coffee and A2 paid the price of the coffee and thereafter they left. PW7 is the brother in law of PW1 who has testified that PW1 was residing with him and that the incident was revealed to him by PW1 only on 15-7-1986 and that it was as directed by him that Pw1 intimated the matter to the police. He has stated that he is running a silver refinery and was also conducting financing

business. It is stated that A3 was his staff in the medical shop earlier and he had left his shop on account of certain problems in between. He has admitted that the Central Excise officials had earlier conducted raid in his shop. He has stated that PW1 used to attend his medical shop and sit at the cash desk. Pw8 an autorikshaw driver at Palai has stated that on 17-7-1986 at about noon A1 and A2 hired his autorikshaw after they came out of the acid shop of Rajaram (PW9) and he took them to the K.S.R.T.C. bus stand. PW9 Rajaram is the person who allegedly purchased the seized gold ornaments from A3. He did not support the prosecution at all. According to him, he was made to manufacture and handover the gold ornaments to Pw23 under threat that he will be put behind bars. PW10, the Superintendent of the Central Excise office, Kottayam has stated that A1 is under suspension from 5-5-1984 onwards . It was brought out from his evidence that A1 had surrendered his identity card and A2 is a peon in the department. PW12,

another Central Excise Inspector has testified that subsequently A2 was suspended from service. PW20 is the gold smith who has testified and weighed the gold ornaments recovered. PW22 is the Sub Inspector who registered the crime and recorded the F.I.S. on 17-7-1986. PW23, the Circle Inspector has testified with respect to the arrest of the accused and the seizure of Mos.1 to 8 series of gold ornaments as per Section 27 statement of A3. He has stated that A1 and A2 were arrested on 25-7-1986 and A3 on 1-8-1986.

4. It is the contention of counsel for the revision petitioner that the delay in lodging the F.I.S., i.e. four days has not been properly explained. It is further contended that the F.I.R. has reached the court after 4 days, i.e. on 21-7-1986 and that there is no explanation for the same. It is pointed out that although the above ground was raised when PW22 was examined, both the courts below did not consider the above contention. Hence, in the absence of any explanation for the delayed submission of

the F.I.R. before the court, the prosecution case is rendered suspicious, it is argued. It was brought out from the evidence of PW19, the attestor to the scene mahazar that when the scene mahazar was prepared, A1 and A2 were sitting in the police jeep. The point is that Ext.P3 scene mahazar was prepared on 18-7-1986, as per the version of the prosecution and A1 and A2 were arrested, as per the prosecution, only on 25-7-1986. The above aspect, according to the prosecution, indicated that the accused were already in police custody and the prosecution case the date of arrest is false. According to the defence, Ext.D3 is the copy of the application filed on behalf of A1 in the Chief Judicial Magistrate's Court, Kottayam in C.C.No.196/1985 on 17-7-1986 seeking to excuse the absence of A1 in the court mentioning that since 11-7-1986 A1 is in police custody and hence he could not be present in court. It is also contended that the wife of A1 had filed a habeas corpus petition before the High Court seeking release of A1 who was allegedly in illegal custody of the police

and that she had filed the above habeas corpus petition before the alleged date of the arrest of the accused by PW23. PW23, the Circle Inspector had pleaded ignorance as to the answer brought out when PW19 was cross examined and as to the application filed on behalf of A1 in the Chief Judicial Magistrate's Court. So far as habeas corpus petition is concerned he has stated that the police has filed an affidavit before this Court in this regard. It is also contended that the recovery in pursuance of Section 27 statement has not been proved by any independent evidence. The witnesses to the alleged recovery i.e. Pws.13 and 14 as well as PW9 the owner of the shop from where the ornament were recovered did not support the prosecution. All the same, I find that nothing has been brought out to disbelieve the version of PW23, the Circle Inspector. Just the fact that he happened to be an official witness is no reason to reject his version. The MOs. have been identified by PW1 as well as PW3, the mother. The contentions that there is no evidence adduced

to prove as to how A3 got information that PW1 was carrying the gold etc., I find, are only with respect to the peripheral matters. I am not impressed also by the contention that the accused were already in the police custody from 11-7-1986 onwards. But I find that the delay in registering the F.I.R. i.e. of four days and the further delay of the F.I.R. reaching the court, i.e. another four days is quite material. Absolutely there is no explanation for the delay in the F.I.R. reaching the court. The F.I.R. registered on 17-7-1986 has reached the court only on 21-7-1986. The above delay is inordinate. PW22, the S.H.O. was specifically questioned in the cross examination about the above aspect, although the accused was not bound to question him with respect to the delay and it is the duty of the prosecution to explain the delay. PW22 has no explanation at all for the delay caused. The delay in lodging the F.I.R. from 13-7-1986 to 17-7-1986 has also not been properly explained. The incident has taken place at about 6 a.m. on 11-7-1986. The F.I.R. has

been registered only on 17-7-1986 at 6.30 p.m. It is stated that PW1 did not reveal the incident even to PW7, his brother in law upto 15-11-1986. What was the reason for the above non-disclosure is not explained. If calculated from the date of the incident upto the F.I.R. reaching the court, the delay is more than seven days. The above circumstances, I find that the accused is entitled to the benefit of doubt.

Hence, the conviction and sentence imposed on the accused/revision petitioners are herewith set aside. They are acquitted. The MOs. will be disposed of as per the order of the trial court. The Crl. revision petitions are allowed.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NOS.592,785 & 805
OF 1999

ORDER

8-8-2007